

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>8:05CR288</b>
	)	
<b>v.</b>	)	
	)	
<b>ALLEN GREEN,</b>	)	<b>ORDER</b>
	)	
<b>Defendant.</b>	)	
	)	

This matter is before the court on defendant Allen Green's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (Filing No. 81), and defendant's Motion to Proceed In Forma Pauperis (Filing No. 79). Defendant's motion was filed as a "Motion to Vacate, Set Aside, or Correct Sentence by a Federal Prisoner Under 28 U.S.C. § 2255," but upon further review is appropriately characterized as a Petition for Writ of Habeas Corpus. In his motion defendant asks that the government's appeal to the Eighth Circuit be thrown out as unconstitutional. A review of the record shows that the United States actually moved to dismiss its appeal to the Eighth Circuit and this motion was granted on June 6, 2006. The appeal was dismissed in accordance with Federal Rules of Appellate Procedure 42 (b), and Judgment was entered on June 6, 2006 (Filing No. 78). Therefore, as defendant has essentially prevailed, defendant's motion is moot.

**IT IS ORDERED:**

1. Defendant's motion for a Writ of Habeas Corpus (Filing No. 81) is denied as moot;
2. Defendant's Motion to Proceed In Forma Pauperis (Filing No. 79) is granted;
2. The Clerk of Court is directed to send defendant a copy of this Order at his last known address.

DATED this 21<sup>st</sup> day of September, 2006.

BY THE COURT:

s/ Joseph F. Bataillon  
JOSEPH F. BATAILLON  
Chief United States District Judge